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*Counsel to the State of Louisiana and
Robert Kyle Ardoin in his capacity as
Secretary of State of the State of Louisiana*

THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re: Danil Ezekiel Faust)	
)	Bankruptcy Case No. 22-00233-ELG
)	
Debtor.)	Chapter 7
)	
Danil Ezekiel Faust,)	
)	
Plaintiff,)	
)	Adv. Pro. No. 23-10010-ELG
vs.)	
)	
State of Louisiana and Robert Kyle Ardoin,)	
in his official capacity as the Secretary of)	
State of Louisiana.)	
)	
Defendants.)	

DEFENDANTS' MOTION TO DISMISS COMPLAINT

Defendants State of Louisiana (“Louisiana”) and Robert Kyle Ardoin¹ in his official capacity as the Secretary of State of Louisiana (“Secretary of State” and collectively with Louisiana, the “Defendants”), by their undersigned counsel, file this Motion to Dismiss the Complaint in the above captioned adversary proceeding pursuant to Rule 12(b)(6) of the Federal

¹ The Secretary of State was named as a defendant in paragraph 5 of the Complaint but not listed as a defendant in the caption of this action or properly served consistent with the requirements of Bankruptcy Rule 7004(h).

Rules of Civil Procedure, which is made applicable hereto by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, stating to the Court as follows:

I. INTRODUCTION.

Plaintiff has filed the instant frivolous and vexatious adversary proceeding purportedly alleging violations of the False Claims Act (31 U.S.C. §§ 3729 – 3733) (“FCA”) and the Help America Votes Act (52 U.S.C. §§ 20901 - 21145) (“HAVA”). The allegations in the Complaint, such that they are, are insufficient to maintain a cause of action against Defendants as a matter of law, and no relief against Defendants may be afforded Plaintiff. Specifically, the generalized assertions in the complaint fail the applicable pleading standards under Supreme Court precedent and fail to allege violations of the FCA with particularity as required by Fed. R. Civ. P. 9(b). Further, the HAVA does not contain a private right of action and Plaintiff has failed to comply with the requirements for bringing a cause of action under the FCA. Plaintiff also lacks standing to bring these claims which, if they were viable would belong to his bankruptcy estate. To the extent Plaintiff believes that such claims vest in him individually and not the bankruptcy estate, this Court lacks jurisdiction to hear them. Finally, Plaintiff has failed to properly serve the Defendants. All claims asserted against Defendants in this action should be dismissed, with prejudice.

II. FACTS ALLEGED IN THE ADVERSARY COMPLAINT²

1. Plaintiff alleges that on November 1, 2022, he cast a ballot in the 2022 election for Senator of Louisiana. Complaint at ¶ 6.

2. Plaintiff alleges that his bankruptcy petition was filed on December 20, 2022 “to retrieve the permanent paper record of his ballot.” Complaint at ¶ 7.

² The following “facts” are taken from the allegations of the Plaintiff’s adversary complaint. Defendants do not concede their veracity and have omitted certain legal conclusions from this recitation.

3. Plaintiff alleges that he submitted a certain document styled a “Notice of Demand” which purportedly notified the Secretary of State “that the permanent paper record was to be classified as a chose in action, and this right of action would be assigned to the corporation known as None of the Above owned by plaintiff, and further would be assigned to the supreme Court of the united States [sic].” Complaint at ¶ 8.

4. On February 23, 2023, Plaintiff alleges that he submitted a Notice to the Supreme Court of the United States of the alleged transfer of the chose in action. Complaint at ¶ 9.

5. On January 26, 2023, at the Section 341 meeting of creditors, Plaintiff alleges that he verbally informed counsel to the Office of the United States Trustee that he wished to transfer the chose in action to the corporation owned by Plaintiff, None of the Above, to be further assigned to the supreme Court of the united States [sic]. Complaint at ¶ 10.

6. Plaintiff alleges that the Secretary of State “did knowingly and willfully present, and caused to be presented false, fraudulent and fictitious claims for payment or approval to the Government of the United States, dependent upon compliance of section 301 of the Help America Vote Act, with actual knowledge that such claims were to be used contrary to the conditions listed contrary to the provisions of [the FCA].” Complaint at ¶ 11.

7. Plaintiff alleges that the Secretary of State “did knowingly and willfully make, use, and cause to be made and used, false records and statements material to a false and fraudulent claim dependent upon the compliance of section 301 of the Help America Vote Act, with actual knowledge and reckless disregard of the truth that such funds were to be used contrary to the provisions of [the FCA].” Complaint at ¶ 12.

8. Plaintiff alleges that the Secretary of State “did knowingly and willfully neglect and fail to comply with his duty to retain and preserve any record or paper for a period of twenty-

two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate in accord and satisfaction with the provisions of [the HAVA.]” Complaint at ¶ 13.

III. LEGAL STANDARD

“Although a pro se litigant’s pleadings are to be construed liberally, his complaint must contain factual allegations sufficient ‘to raise a right to relief above the speculative level’ and that ‘state a claim to relief that is plausible on its face.’” *Hodge v. Gansler*, 547 Fed. Appx. 209, 210 (4th Cir. 2013). The United States Supreme Court held in *Bell Atl. Corp. v. Twombly* that under Rule 12(b)(6) a plaintiff must articulate and plead a sufficient factual basis for his or her claims, not simply hope that discovery might provide such a basis. *Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965-66 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009). A plaintiff’s obligation to provide the “grounds” of his or her “entitlement to relief” requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. *Twombly*, 550 U.S. 555, 127 S. Ct. at 1965-66. “Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.* Under the *Twombly* standard, “largely groundless claim[s]” should not be allowed to “take up the time of a number of other people, with the right to do so representing an in terrorem increment of the settlement value.” *Id.* at 1966 (quoting *Dura Pharm. Inc. v. Broudo*, 544 U.S. 336, 347 (2005)). Rather, “when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, ‘this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court.’” *Id.* (quoting 5 Wright & Miller § 1216, at 233-34).

Moreover, claims under the FCA must be pled with particularity consistent with the requirements of Fed. R. Civ. P. 9(b). *See United States v. Comstor Corporation*, 308 F.Supp.3d

56, 58 (D. D.C. 2018). “This heightened pleading standard is designed to ‘discourage[] the initiation of suits brought solely for their nuisance value, and safeguard[] potential defendants from frivolous accusations of moral turpitude,’ as well as ‘guarantee all defendants sufficient information to allow for preparation of a response.’” *Id. quoting United States ex rel. Heath v. AT & T, Inc.*, 791 F.3d 112, 123 (D.C. Cir. 2015). “The Plaintiff must plead with sufficient particularity ‘the time, place and content of the false representations, the fact misrepresented and what was retained or given up as a consequence of the fraud.’” *Id. quoting United States ex rel. Williams v. Martin-Baker Aircraft Co., Ltd.*, 389 F.3d 1251, 1256 (D.C. Cir. 2004).

IV. ARGUMENT

A. Plaintiff Has Failed to State Any Viable Claim Against Defendants.

Plaintiff’s Complaint includes one count – “False Claims with Intent to Defraud.” As set forth above, Fed. R. Civ. P. 9(b), applicable in this proceeding through Fed. R. Bankr. P. 7009 requires that claims under the FCA be pled with particularity. Plaintiff has not provided any particularity of the purported fraud. Rather, in conclusory pleadings Plaintiff has simply alleged that the Secretary of State made some fraudulent claim for payment. Nowhere in the Complaint has Plaintiff alleged how the Secretary of State’s claim was false or fraudulent, how the Secretary of State used any funds received in violation of law, or how the alleged fraudulent claims damaged the United States. Plaintiff’s generalized allegations cannot withstand scrutiny under the *Twombly* and *Iqbal* standard much less the more rigorous requirements of Fed. R. Civ. P. 9(b).

Plaintiff’s claim that the Defendants violated 52 U.S.C. § 20701 likewise fails to satisfy the applicable pleading requirements. In addition to being the type of generalized assertions held to be insufficient under *Twombly* and *Iqbal*, HAVA does not create a private right of action, and therefore Plaintiff has failed to state a claim for relief. *See Morales-Garza v. Lorenzo-Giguere*,

277 Fed. Appx. 444, 445 (5th Cir. 2008) (per curiam) (“HAVA does not provide the declaratory relief sought by [plaintiff].”); *see also Sandusky Cnty. Democratic Party v. Blackwell*, 387 F.3d 565, 572 (6th Cir. 2004) (“HAVA does not itself create a private right of action.”); *Brunner v. Ohio Republican Party*, 555 U.S. 5, 5 (2008) (per curiam) (plaintiffs were unlikely to succeed on the merits of their HAVA claim because it does not confer a private right of action). Rather, 52 U.S.C. §§ 20702 – 20704 contemplate enforcement solely by the Attorney General of the United States for alleged violations of 52 U.S.C. § 20701. It follows that Plaintiff’s claims for a violation of HAVA should be dismissed.

B. Plaintiff Failed to File the Complaint Under Seal as Required by the FCA.

The FCA establishes specific procedures necessary for filing a complaint including the requirement relevant that “the complaint shall be filed in camera, shall remain under seal for at least 60 days and shall not be served on the defendant until the court so orders.” 31 U.S.C. § 3730(b)(2). Plaintiff failed to file the complaint under seal consistent with this requirement. Accordingly, this Court in the exercise of its discretion may fashion an appropriate remedy, including dismissal. *State Farm Fire and Cas. Co. v. United States ex rel. Rigsby*, 580 U.S. 26, 37, 137 S.Ct. 436, 444 (2016). Defendants submit that the appropriate remedy in light of the Complaint’s additional failings is dismissal with prejudice.

C. Plaintiff Lacks Standing.

“An action must be prosecuted in the name of the real party in interest.” Fed. R. Civ. P. 17(a), Fed R. Bankr. P. 7017. Plaintiff is a debtor in a Chapter 7 case. William Douglas White was appointed Chapter 7 Trustee and is responsible for administering the assets of the Debtor’s estate. *See* 11 U.S.C. § 704. The claims set forth in this adversary proceeding relate entirely to pre-petition acts. Accordingly, any claim belongs to the estate and may only be brought by the

Trustee. *See* 11 U.S.C. § 541. Further, the Complaint itself alleges that any action was assigned first to an entity known as None of the Above, and then to the Supreme Court of the United States. Clearly, Plaintiff is not the proper party in interest and the case must be dismissed.

D. If Plaintiff Has Standing, this Court Lacks Subject Matter Jurisdiction.

Alternatively, to the extent this Court were to conclude that the claims raised fall outside the bankruptcy estate, this Court lacks subject matter jurisdiction to adjudicate such claims. 28 U.S.C. § 1334(b) and the Order of Reference entered by the United States District Court for the District of Columbia vest the Bankruptcy Court with jurisdiction over “all civil proceedings arising under title 11, or arising in or related to cases under title 11.” 28 U.S.C. § 1334(b). The Supreme Court of the United States has held that “Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate.” *Celotex Corp.*, 514 U.S. at 308 *quoting Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). Here, Plaintiff cannot have it both ways. Either the claims are part of his bankruptcy estate – in which case they are controlled by the Trustee. Alternatively, the claims are not part of his bankruptcy estate and are therefore unconnected to the bankruptcy estate – in which case the Court lacks subject matter jurisdiction.

E. Defendants Have Not Been Served.

Federal Rule of Bankruptcy Procedure 7004(b)(6) allows for service by first class mail [u]pon a state ... by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state[.]” Fed. R. Bankr. P. 7004(b)(6). In this case, Plaintiff’s Certificate of Service acknowledges that the

Summons and Complaint were served by First Class Mail upon John Bel Edwards, Governor of the State of Louisiana.

The manner prescribed by Louisiana for serving a summons on State Actors is set forth in Louisiana Code of Civil Procedure article 1265 and Louisiana Revised Statute 13:5107.

Louisiana Code of Civil Procedure article 1265 states:

Service of citation or other process on any political subdivision, public corporation, or state, parochial or municipal board or commission is made at its office by personal service upon the chief executive officer thereof, or in his absence upon any employee thereof of suitable age and discretion. A public officer, sued as such, may be served at his office either personally, or in his absence, by service upon any of his employees of suitable age and discretion.

If the political entity or public officer has no established office, then service may be made at any place where the chief executive officer of the political entity or the public officer to be served may be found.

Additionally, Louisiana Revised Statute 13:5107 provides in pertinent part:

In all suits filed against the state of Louisiana or a state agency, citation and service may be obtained by citation and service on the attorney general of Louisiana, or on any employee in his office above the age of sixteen years, or any other proper officer or person, depending upon the identity of the named defendant and in accordance with the laws of this state, and on the department, board, commission, or agency head or person, depending upon the identity of the named defendant and in accordance with the laws of this state, and on the department, board, commission, or agency head or person, depending upon the identity of the named defendant and the identity of the named board, commission, department, agency, or officer through which or through whom suit is to be filed against.

In order to effectuate service on the Secretary of State, Plaintiff would need to serve both the Secretary of State and the Attorney General. He did neither. In order to effectuate service on the State of Louisiana, service on the Attorney General is required. Accordingly, the Complaint should be dismissed for lack of personal jurisdiction or proper service.

CONCLUSION

For the foregoing reasons, Defendants respectfully requests that the Court dismiss the Complaint with Prejudice.

Respectfully submitted,

State of Louisiana; and Robert Kyle Ardoin
in his capacity as Secretary of State of the
State of Louisiana

By Counsel

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By: /s/ Dylan G. Trache
Dylan G. Trache, DC Bar No. 476318

*Counsel to the State of Louisiana and
Robert Kyle Ardoin in his capacity as
Secretary of State of the State of Louisiana*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of April 2023, the foregoing Motion was served via first class mail, postage prepaid, to:

Danilo Augusto Feliciano
General Delivery
Washington, DC 20090

And by electronic mail to:

daniloafeliciano@gmail.com

/s/ Dylan G. Trache
Dylan G. Trache

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FOR THE DISTRICT OF COLUMBIA

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State of Louisiana and Robert Kyle Ardoin,)	
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State of Louisiana.)	
)	
Defendants.)	

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS COMPLAINT

Upon consideration of the *Motion to Dismiss Complaint* (“Motion”) filed by Defendants State of Louisiana (“Louisiana”) and Robert Kyle Ardoin¹ in his official capacity as the Secretary of State of Louisiana (“Secretary of State” and collectively with Louisiana, the “Defendants”), and after due deliberation; and good and sufficient cause appearing therefore;

¹ The Secretary of State was named as a defendant in paragraph 5 of the Complaint but not listed as a defendant in the caption of this action or properly served consistent with the requirements of Bankruptcy Rule 7004(h).

IT IS HEREBY ORDERED

1. The Motion is GRANTED.
2. The Plaintiff's Complaint is DISMISSED with prejudice.

Proposed by:

/s/ Dylan G. Trache
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Robert Kyle Ardoin in his capacity as
Secretary of State of the State of Louisiana*

Copies to:

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END OF ORDER